

REMARKS

Claims 1-23 are pending before entry of this Amendment. By way of this Amendment, Applicants have amended claim 1 and have canceled claim 14 without prejudice. No new matter has been added.

Applicants address each of the objections and rejections below in the order in which they appear in the Action.

Claims 1-4 and 11-23 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,002,048 to Makiej, Jr. (Makiej) in view of U.S. Patent No. 6,382,205 to Weinstein (Weinstein). Applicants respectfully traverse this rejection.

Referring first to Makiej, the instant claims recite that "the first medicament dispenser is different in type to the at least one further medicament dispenser" (instant application claim 1), while Makiej teaches the use of two, similar aerosol containers (Makiej col. 1, l. 39). The Office Action acknowledges this distinction.

Looking at Makiej alone, there is no teaching or suggestion within Makiej to motivate one of skill in the art to modify Makiej with different-type medicament dispensers. Makiej seeks to solve the problem of inconvenience caused by use of multiple metered dose inhalers (Makiej col. 1, ll. 23-31) by teaching (Makiej col. 1, l. 39) and illustrating (Makiej Figs. 1 and 2) a device for use with "two aerosol containers" (Makiej col. 2, ll. 32-43). Makiej provides no mention of dispensers other than metered dose aerosol containers and provides no other suggestion to use a medicament dispenser that is different in type to an at least one other medicament dispenser.

Referring now to Weinstein, Weinstein does nothing to cure the deficiencies of Makiej. First, there is no suggestion or motivation to combine the Makiej and Weinstein references. Weinstein describes a package for housing a first topical agent and a second topical agent (Weinstein col. 3, ll. 51-65). As shown in Figure 1, the topical agents are stored within a package, out of contact with one another. If anything, the separately stored agents of Weinstein stand in stark contrast to the Makiej inhalation device which houses two aerosol containers within a single inhalation device. In fact, it is the handling of multiple separate therapeutics, as taught by Weinstein, that Makiej seeks to avoid in the first place (Makiej col 1., ll. 18-31). Even if combined (solely for arguments sake), Weinstein would teach the person using the Makiej device to separate the two or more medicament dispensers from the device and to store the dispensers separately in a package (Fig. 1). This

would obviously destroy the intended function of the Makiej device. As shown, Makiej and Weinstein, either alone or in combination, fail to disclose the attributes of the claimed invention.

Applicants have further emphasized the distinction between the references and the claimed invention, and have addressed the Office's decision to disregard the preamble language (Office Action, para. 1), by incorporating structural language from claim 14 into claim 1 regarding a

mixing chamber comprising inlets for receiving medicament from each medicament dispenser and an outlet for delivery of the combination medicament product.

Claims 5-10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Makiej in view of Weinstein further in view of U.S. Patent No. 3,704,725 to Marand (Marand). Makiej and Weinstein having been addressed above, Marand is discussed below.

The Office Action states that "Marand teaches a unitary medicament dispenser (Figure 1), product container (first medicament dispenser), (1) and a propellant cartridge (at least one further medicament dispenser) (9), that dispenses a combination medicament product by means of coupler-aspirator (3)." The Office Action assumes that the containers described in Marand are "medicament dispensers". In fact, the reference makes no mention of medicaments or medicament dispensers at all. There is no indication that the device has any type of medical use. Here, the Office has impermissibly added elements which do not exist in the text of the disclosure, and has mischaracterized the reference in order to combine it with other references. Such mischaracterization is improper, and Applicants respectfully submit that the reference should be withdrawn.

To further contrast the use of medicament dispensers of the instant invention with non-medicament dispensers used elsewhere, Applicants have amended claim 1 to recite dispensers which "contain" medicament rather than simply being "for the delivery of" medicament. Disclosure of exemplary medicaments and of other components that might be contained within the medicament dispensers is provided on pages 41-44 of the originally-filed specification.

The present Amendment is filed within the shortened two month period from the date of the action. Furthermore, Applicants assert that the instant Amendment places the application in a condition for allowance, or in the alternative, that its entry is appropriate as the instant amendments place the application in a better condition for appeal, as permitted by 37 CFR 1.116.

The Examiner is invited to contact the undersigned at (919) 483-8160, to discuss this case, if desired.

Respectfully submitted,



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